

STATE OF UTAH
OFFICE OF THE ATTORNEY GENERAL



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August 3, 2022

In re: Google Play Store Antitrust Litigation, No. 3:21-md-02981-JD (N.D. Cal.);
State of Utah, et al. v. Google LLC et al., No. 3:21-cv-05227-JD (N.D. Cal.); *In re*
Google Play Consumer Antitrust Litigation, No. 3:20-cv-05761-JD (N.D. Cal.)

VIA ECF

Hon. James Donato
United States District Judge

Your Honor:

The Plaintiff States and Consumers in the above-captioned actions have a discovery and scheduling matter they wish to raise with the Court. Specifically, States and Consumers respectfully request a one-month extension of the fact discovery cut-off (August 8) and expert report (August 15) deadlines. In order to preserve the existing times to complete various events in the case, States and Consumers suggest the Court should adjust the entire case schedule by one month, including the trial date. A draft schedule outlining the effect of granting this request is appended to this correspondence as Exhibit A.

The States and Consumers request the extension for two primary reasons. First, despite their best efforts, the parties have yet to schedule a number of depositions that have been subpoenaed or noticed. While the parties have been taking depositions virtually every week, several have needed to be rescheduled due to conflicts and health issues and plaintiffs are awaiting dates for a few depositions. While issues may arise that might require a handful of depositions to spill over even beyond the new deadline, the bulk of these depositions ought to be completed within an additional thirty days. Plaintiff States and Consumers and Google agree that the additional thirty days, if allowed, could not be used to issue additional written

discovery, or to notice new depositions of witnesses that are not identified prior to August 8, the existing fact discovery cut-off (this is putting aside the issue of any Match-specific discovery, which is a separate issue).

Second, the States and Consumers would benefit from additional time to complete their expert reports. This partly has to do with the state of fact discovery: The fact that several important depositions have not yet been completed means that, absent an extension, certain aspects of the record might not be addressed by plaintiffs' experts until their reply reports. Extending the expert deadline will ameliorate this issue to a significant degree. States and Consumers also need additional time because of the voluminous nature of the transactional data in this case, encompassing billions of Play Store transactions. Simply compiling the results of a requested data analysis takes several days of computer processing time. This has unexpectedly delayed the States' completion of their expert damages analysis.

We have met and conferred with all parties regarding this request, and have shared this letter in advance of filing it.

Google does not oppose moving the schedule as proposed by States and Consumers, provided that all of the dates in the current schedule move by equivalent amounts. In other words, Google has requested that any adjustment to the schedule not impact the number of days or weeks between filings and hearings under the current schedule. Google has further requested that neither side issue any new written discovery and/or subpoenas during the fact discovery extension period (putting aside the issue of Match). The States and Consumers have agreed to these conditions.

Plaintiff Epic Games, Inc. submits the following position: Epic does not object to a one-month extension of interim calendar dates. Epic agrees with Google, the States, and Consumers that neither side may issue any written discovery and/or subpoenas during the fact discovery extension period; specifically, discovery as to Epic should be closed as of August 8, 2022, with the exception of certain depositions already agreed to take place after the close of fact discovery. If an extension of interim deadlines cannot be achieved without a corresponding extension of the trial date, Epic opposes any such extension. The April 3, 2023 trial date is already more than two years from the initial case management conference and is the second extension of the trial date. Given the injunctive relief sought by Epic and its ongoing injury, Epic would suffer prejudice if its claims were tried any later than the current trial date.

The States and Consumers will be prepared to address this issue at this Thursday's class certification hearing, if that is convenient for the Court, or in any other way or format the Court would like.¹

Respectfully,

/s/ Brendan Glackin

Brendan Glackin

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¹ We believed a letter would be the most efficient and appropriate way to raise the matter with the Court. If the Court would prefer a motion pursuant to Local Rule 6-3 instead, we would be happy to proceed in that fashion, and would apologize for misunderstanding the correct procedure.

Exhibit A

Event	Deadline	Revised Deadline
Fact discovery cut-off	August 8, 2022	September 6, 2022
Plaintiffs' merits expert reports	August 15, 2022	September 12, 2022
Google's merits expert reports	September 19, 2022	October 17, 2022
Plaintiffs' merits expert rebuttal reports	October 17, 2022	November 14, 2022
Merits experts discovery cut-off	November 7, 2022	December 5, 2022
Last day to file dispositive and <i>Daubert</i> motions	November 10, 2022	December 8, 2022
Dispositive and <i>Daubert</i> motion responses	December 8, 2022	January 5, 2023
Dispositive and <i>Daubert</i> motion replies	December 29, 2022	January 26, 2023
Joint submission for merits experts' concurrent expert proceeding	December 30, 2022	January 27, 2023
Concurrent expert proceeding for merits experts	January 5, 2023 (Tue), at 2:00 p.m.	February 2, 2023 at 2:00 p.m.
Dispositive motion hearing	January 19, 2023, at 10:00 a.m.	February 16, 2023 at 10:00am
Final pretrial conference	March 16, 2023, at 1:30 p.m.	April 13, 2023 at 1:30pm
Jury Trial	April 3, 2023, at 9:00 a.m.	May 1, 2023 at 9:00am